

REMARKS

Claims 2-13 and 44-47 have been amended to improve the antecedent basis and clarity of the claims. No new matter has been added.

The BPAI's Decision on Appeal mailed February 26, 2004, has been received and reviewed. Claims 1-13 and 43-47 are currently pending in the application and stand rejected.

Applicants have amended claims 1-13 and 43-47, added new claim 48, and respectfully request reconsideration of the application as proposed to be amended herein.

35 U.S.C. § 112, Second Paragraph Rejection

The rejection of claim 4 under 35 U.S.C. § 112, second paragraph, has been reversed by the BPAI in its Decision on Appeal. As such, the rejection is not addressed herein.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 4,806,613 to Wardle in view of United States Patent No. 4,976,794 to Biddle *et al.* and United States Patent No. 5,747,603 to Hinshaw *et al.*

Claims 1-13 and 43-47 stand rejected under 35 U.S.C. § 103(a) ("Section 103") as being unpatentable over U.S. Patent No. 4,806,613 to Wardle ("Wardle") in view of United States Patent No. 4,976,794 to Biddle *et al.* ("Biddle") and United States Patent No. 5,747,603 to Hinshaw *et al.* ("Hinshaw").

M.P.E.P. 706.02(j) sets forth the standard for a Section 103 rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The obviousness rejection of claims 1-13 and 43-47 is improper because the cited references do not teach or suggest all the limitations of the amended claims.

As amended, independent claim 1 recites an energetic thermoplastic elastomer that comprises A blocks, B blocks, and linking groups. The A blocks are terminated with isocyanate-reactive groups derived from monomers comprising one or more oxetane derivatives. The A blocks are crystalline below about 60°C. The B blocks are terminated with isocyanate-reactive groups derived from monomers comprising at least one member selected from the group consisting of oxirane and derivatives thereof. The B blocks are amorphous above about -20°C. The linking groups are derived from at least one diisocyanate and at least one linking compound comprising two functional groups which are reactive with isocyanate moieties of the at least one diisocyanate. The energetic thermoplastic elastomer has a density ranging from approximately 1.31 g/cm³ to approximately 1.42 g/cm³.

The cited references do not teach or suggest that their respective energetic thermoplastic elastomers have a density ranging from approximately 1.31 g/cm³ to approximately 1.42 g/cm³. As such, the cited references do not teach or suggest all the limitations of the claimed invention.

Since the cited references do not teach or suggest all the limitations of claim 1, the obviousness rejection is improper and should be withdrawn.

Claims 2-13 are allowable as depending from an allowable base claim. New claim 48 is also allowable as depending from an allowable base claim.

Independent claim 43 is allowable for substantially the same reasons as discussed above for claim 1. Specifically, the cited references do not teach or suggest that their respective energetic thermoplastic elastomers have a density ranging from approximately 1.31 g/cm³ to approximately 1.42 g/cm³.

Since the cited references do not teach or suggest all the limitations of claim 43, the obviousness rejection is improper and should be withdrawn.

Claims 44-47 are allowable as depending from an allowable base claim.

ENTRY OF AMENDMENTS

The amendments to claims 1-13 and 43-47 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application.

The amendments to claims 1 and 43 are supported by the as-filed specification at page 20, line 13 and page 21, line 19.

CONCLUSION

Claims 1-13 and 43-48 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



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